Supreme Court, U.S.
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No. 94-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

SARA ALVAREZ, ANIBAL RODRIGUEZ, DOLORES CASTRO, HILDA RODRIGUEZ, and SAADIA PIMENTEL,

Petitioners,

v.

UNITED STATES,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

Richard A. Hamar
(Counsel of Record)
Hamar & Hamar
2437 Briarcrest Road
Beverly Hills, CA 90210
(310) 550-0460

Alan B. Morrison
Allison M. Zieve
Public Citizen Litigation Group
Suite 700
2000 P Street, NW
Washington, D.C. 20036
(202) 833-3000

Attorneys for Petitioners

QUESTION PRESENTED

May the United States obtain automatic dismissal under the fugitive disentitlement doctrine of adverse claims in a civil forfeiture proceeding where (a) the property is located wholly outside the United States, (b) the claimants are neither residents nor citizens of the United States, and the court lacks personal jurisdiction over them, and (c) the indictment from which they allegedly fled was filed only after the claimants objected to the forfeiture, long after the original indictment on which the forfeiture was based, and the only overt acts allegedly involving the claimants were not directed at any action or property within the United States?

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

No. 94-

SARA ALVAREZ, ANIBAL RODRIGUEZ, DOLORES CASTRO, HILDA RODRIGUEZ, and SAADIA PIMENTEL,

Petitioners,

v.

UNITED STATES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The decision of the United States Court of Appeals for the Eleventh Circuit is unreported and is reproduced in the Appendix at 1a-3a. The decisions of the United States District Court for the Middle District of Florida are unreported and are reproduced at App. 4a-8a, 9a-13a, 14a-19a, and 20a-22a.

JURISDICTION

The Court of Appeals entered its judgment on April 13, 1994. Petitioners filed a timely petition for rehearing and suggestion for rehearing en banc, which was denied on June 20, 1994 (App. 23a-25a). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

At the time the actions below were commenced, 28 U.S.C. § 1355 provided, in relevant part:

> The district courts shall have original jurisdiction, exclusive of the courts of the States, of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture, pecuniary or otherwise, incurred under any Act of Congress, except matters within the jurisdiction of the Court of International Trade under section 1582 of this title.

In October, 1992, the statute was amended to add the following provision, among others:

> (b)(1) A forfeiture action or proceeding may be brought in--
>
> > (A) the district court for the district in which any of the acts or omissions giving rise to the forfeiture occurred, or
> >
> > (B) any other district where venue for the forfeiture action or proceeding is specifically provided for in section 1395 of this title or any other statute.
>
> (2) Whenever property subject to forfeiture under the laws of the United States is located in a foreign country, or has been detained or seized pursuant to legal process or competent authority of a foreign government, an action or proceeding for forfeiture may be brought as provided in paragraph (1), or in the United States District Court for the District of Columbia.

STATEMENT OF THE CASE

This case involves an attempt by the United States government to forfeit property located wholly outside the

United States that is owned by individuals who are neither citizens nor residents of the United States. Rather than deciding the merits of the claims at issue here, the lower courts dismissed petitioners' claims to the property because they failed to appear in a criminal case brought against them *after* they raised significant claims on the merits and jurisdictional defenses in the civil forfeiture proceedings.

On February 24, 1989, the United States government obtained an indictment in the United States District Court for the Middle District of Florida of numerous alleged members of a cocaine smuggling conspiracy. RE 23.[1] None of these petitioners was named in the indictment. On December 15, 1989, law enforcement authorities in Colombia killed Jose Rodriguez Gacha, an alleged member of the conspiracy and a relative of petitioners. RE 30. On January 26, 1990, the government filed a superseding indictment. Again, none of these petitioners was named in that indictment.

Pursuant to 28 U.S.C. § 1355 and § 2461, 18 U.S.C. § 981, and 21 U.S.C. § 881, on August 2 and August 21, 1991, the United States filed civil forfeiture actions in the Middle District of Florida to seize various assets allegedly belonging to Mr. Gacha. RE 19. The government contended that the assets were the traceable proceeds of, or were intended to be used in, drug trafficking. RE 20. Four of the civil forfeiture actions sought assets held in bank accounts outside the United States, not in the name of Mr. Gacha, but in the names of companies in which petitioners claimed an interest.[2] Each petitioner filed a verified claim

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[1] References to the Record Excerpts in the Court of Appeals are designated RE, followed by a page number. The citations herein are to Appellant's Record Excerpts and Supplemental Record excerpts in Eleventh Circuit No. 92-2294.

[2] The four actions were assigned to one of two district court judges. For the sake of simplicity, the district "courts" below are

(continued...)

in the actions directed at forfeiture of his or her assets. RE 33. Petitioners maintained that the money in their accounts had been earned through legitimate businesses primarily in Colombia. RE 34. According to the deposition testimony of the lead government agent handling the underlying investigation, the practice of Colombians depositing "flight capital" in foreign banks, to be used if they decide to leave Colombia in the future, is a legitimate and common practice in Colombia.

The *res*, or property, at issue is approximately $5,500,000, held in eight bank accounts in London, the Isle of Man, and Switzerland. The funds originally held in Switzerland were transferred to a Florida bank before petitioners filed any claim to those accounts. Since that transfer occurred after the *in rem* actions were filed, this petition will refer to the location of the *res* as of the time of the filing of these actions, when *in rem* jurisdiction, if any, would have had to attach.

On October 16, 1991, petitioners filed motions to dismiss based on lack of *in rem* jurisdiction, since all of the property at issue was located outside the United States. They relied in large part on *United States v. One Lear Jet Aircraft*, 836 F.2d 1571 (11th Cir.), *cert. denied*, 487 U.S. 1204 (1988), which based *in rem* jurisdiction on the presence of

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[2](...continued)
collectively referred to as the district "court."

The parties filed all motions and other papers discussed herein on the same days in district court cases No. 91-647-CIV-J-16, No. 91-649-CIV-J-16, and No. 91-646-CIV-J-10. The dates cited herein are the dates on which events occurred in these three cases. In No. 91-1013-CIV-J-12, not all events occurred on these same days, and petitioners did not file the two claimants' motions discussed herein. However, since the Eleventh Circuit consolidated the four cases and did not distinguish among them, and because the same issues present themselves in all four, this petition does not distinguish among them.

the *res* in the court's territorial jurisdiction. RE 69, 73, 74. Petitioners' position was strengthened on November 4, 1991, when another district court relied on the Eleventh Circuit's decision in *One Lear Jet Aircraft* in holding that the United States did not have *in rem* jurisdiction over money in a Hong Kong bank. *United States v. $3,035,648.50 and $330,000 in Hong Kong and Shanghai Banks*, CIV-91-217E (W.D.N.Y. Nov. 4, 1991).

The government's oppositions to petitioners' motions to dismiss were originally due on October 26, 1991, but the government twice sought extensions of time. RE 6, 7. Meanwhile, the parties proceeded to take and notice discovery, and petitioners agreed to travel to the United States at their own expense to be deposed.

Then, on November 22, 1991, the government obtained a second Superseding Indictment, which charged petitioners, along with the numerous other people previously named as defendants, in connection with the alleged conspiracy at the base of the forfeiture action. The only specific allegations involving petitioners asserted that they became signatories to bank accounts outside the United States in which proceeds from the alleged cocaine smuggling operation were deposited, including the accounts in the forfeiture actions. The charges against petitioners carried penalties of large fines and up to life imprisonment.

The timing of the government's action--obtaining an indictment of petitioners after they filed motions to dismiss and claims on the merits, and after another court had found lack of *in rem* jurisdiction in similar circumstances based on controlling Eleventh Circuit authority--offered reason to suspect that the government had acted in bad faith. Accordingly, petitioners filed Motions for Protective Orders and Stays of General Discovery. RE 58. In its oppositions to those motions, the government made no secret of its reason for obtaining the Superseding Indictment against petitioners: it assumed that petitioners would not appear at

their arraignment; and, therefore, it was preparing its own motion to dismiss on the ground that the actions could be "readily disposed of under the fugitive disentitlement doctrine," under which criminal appeals and certain other claims of fugitives may be dismissed without reaching the merits. RE 66.

Finally, on December 9, 1991, the government filed its oppositions to petitioners' motions to dismiss for lack of jurisdiction. RE 78. The government distinguished the recent decision in *United States v. $3,035,648.50 and $330,000 in Hong Kong and Shanghai Banks*, in part because "the Colombian Claimants are under criminal indictment." RE 84.

To no one's surprise, petitioners' depositions were cancelled, and they did not appear in the criminal case, since had they appeared they surely would have been arrested immediately. Thereafter, the district court denied petitioners' motions to dismiss and granted the government's motions to dismiss on the basis of the fugitive disentitlement doctrine. App. 4a-8a, 9a-13a; *see also* App. 14a-19a. In dismissing petitioners' claims, the district court relied on *United States v. One Parcel of Real Estate*, 868 F.2d 1214 (11th Cir. 1989), in which the court of appeals had upheld the application of the fugitive disentitlement doctrine to dismiss the claim in a civil forfeiture action involving property wholly within the United States that allegedly belonged to a Colombian under indictment in the United States. The court then addressed claimants' motion to dismiss for lack of jurisdiction over the *res*:

> Were Claimant not a fugitive from justice, a substantial objection to *in rem* jurisdiction would be at issue. It is far from settled as to whether a court has *in rem* jurisdiction when the *res* is located not only outside the court's own district, but outside the United States as well. However, that issue need not be decided here,

> due to the Claimant's status as a fugitive from justice.

App. 7a; 12a (citation omitted).

The United States Court of Appeals for the Eleventh Circuit affirmed the district court's dismissals of petitioners' claims in a two-sentence decision, simply citing *One Parcel of Real Estate*. The court did not even address the issues of whether the district court below had jurisdiction to entertain the forfeiture actions or whether the government had acted in bad faith. App. 3a.

REASONS FOR GRANTING THE WRIT

A. The Eleventh Circuit Applied A Sweeping Rule In Dismissing Petitioners' Claims, Contrary To This Court's Teaching In *Ortega-Rodriguez*.

The fugitive disentitlement doctrine is an equitable doctrine, giving a court discretion to dismiss a criminal appeal where the appellant is or becomes a fugitive in the same or a related case. *See Ortega-Rodriguez v. United States*, __ U.S. __, 113 S. Ct. 1199 (1993). Although developed in the context of a criminal defendant who flees after conviction, while his or her own appeal is pending, *see, e.g., Smith v. United States*, 94 U.S. 97 (1876); *Molinaro v. New Jersey*, 396 U.S. 365 (1970); *Estelle v. Dorrough*, 420 U.S. 534 (1975), the doctrine has also been used to dismiss claims in related civil actions. *See, e.g., United States v. One Parcel of Real Estate*, 868 F.2d 1214, 1216 (11th Cir. 1989) (citing cases).

In *Ortega-Rodriguez*, this Court stated that courts may develop rules to guide their discretion in applying the doctrine in a given case, but the rules must be based on "specific, recurring situations." *Ortega-Rodriguez*, 113 S. Ct. at 1209 n.23. Because the Eleventh Circuit had

reflexively applied the fugitive disentitlement doctrine in that case, using the doctrine to require automatic dismissal of "too many appeals," this Court reversed and remanded. *Id.* at 1209 & n.23.

Here again, the Eleventh Circuit has swept too broadly, clearly deviating from this Court's instructions. Although this Court in *Ortega-Rodriguez* identified certain factors that can be properly taken into account in considering various applications of the doctrine, *see id.* at 1206-09, the decisions below offer no suggestion that the lower courts considered any of these factors, or any other factors, in deciding these cases.[3]

Thus, the Eleventh Circuit's two-sentence decision in this case relied solely on *One Parcel of Real Estate* to affirm the district court's dismissals of petitioners' claims in the forfeiture proceedings. App. 3a. The claimant in *One Parcel of Real Estate* was a Colombian who had filed a claim in a civil forfeiture action, but the *res* at issue was real property located in Florida. Soon thereafter, he was indicted for narcotics trafficking, a charge directly related to the forfeiture action. When he did not come to the United States to appear in the criminal case, the district court determined that he was a fugitive from justice and dismissed his claim to the property on that ground. The court of appeals affirmed.

Unlike *One Parcel of Real Estate*, where the property at issue indisputably was located within the court's jurisdiction, the property at issue here was maintained in

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[3]In contrast, courts in other circuits take into consideration the range of circumstances and arguments presented in applying their rules for application of the fugitive disentitlement doctrine. *See, e.g., United States v. Sudthisa-Ard*, 17 F.3d 1205 (9th Cir. 1994); *United States v. Reese*, 993 F.2d 254 (D.C. Cir. 1993); *United States v. Eng*, 951 F.2d 461 (2d Cir. 1991). *But see United States v. Rosales*, 13 F.3d 1461 (11th Cir. 1994) (on remand for consideration in light of *Ortega-Rodriguez*).

accounts located in London, the Isle of Man, and Switzerland. This difference is crucial because the claimant's ownership of property in Florida in *One Parcel of Real Estate* gave the court control over the property and established some connection between him and the jurisdiction where the action was pending. Here, however, that connection is lacking. All the property at issue is located abroad. Petitioners' only connection to the United States is the pendency of the forfeiture actions--initiated to capture the alleged assets of a third party located outside the United States--and the indictment which followed four months later and which alleged no overt action in the United States by any petitioner.

As this Court recognized in *Ortega-Rodriguez*, blanket application of rules developed in other contexts can lead to unreasonable application of the fugitive disentitlement doctrine, as has occurred here. In this case, the lower courts erred in failing to apply the teachings of this Court to the extraordinary circumstances before them. Here, (a) petitioners have not fled from custody or from the United States; (b) the actions they seek to pursue concern property held outside the United States; (c) the question of whether the district court even had jurisdiction over the actions is, at the least, uncertain; and (d) there is a strong inference that the government indicted petitioners solely to gain an advantage in the civil cases. These facts are very different from those to which the fugitive disentitlement doctrine typically applies and from the facts in *One Parcel of Real Estate*. The facts here should have been specifically considered by the lower courts, and the automatic dismissals, based on rules formulated to handle other fact patterns, were plainly in error. *See Ortega-Rodriguez*, 113 S. Ct. at 1209 n.23 (appellate court may develop "generally applicable rules to cover specific, recurring situations."). Because the Eleventh Circuit failed to heed the teaching of *Ortega-Rodriguez*, review should be granted.

B. The Lower Courts' Erroneous Application Of Rules Developed In Other Contexts Improperly Precluded A Determination Of Whether The Action Was Properly Before The District Court.

Civil forfeiture pursuant to 21 U.S.C. § 881 is not a criminal penalty. Rather, a civil forfeiture action under § 881 is a remedial proceeding that enables the government to seize property used to facilitate the commission of a drug-related crime or to recover proceeds traceable to such a crime. *See* 21 U.S.C. § 881; *United States v. D.K.G. Appaloosas, Inc.*, 829 F.2d 532, 541-44 (5th Cir. 1987), *cert. denied*, 485 U.S. 976 (1988). *But see id.* at 540-41 (citing Supreme Court cases in which forfeiture statutes were considered criminal for specific purposes). A civil forfeiture proceeding is brought against the property at issue and, therefore, requires that the court have *in rem* jurisdiction over the property. *Id.* at 543 ("civil forfeiture of crime-related property through an *in rem* proceeding") (quoting legislative history). And because forfeiture results in government deprivation of property, it is subject to the requirements of due process. *See United States v. James Daniel Good Real Property*, __ U.S. __, 114 S. Ct. 492 (1993).[4]

In rem jurisdiction requires, at the least, constructive control over the *res*. *Republic National Bank v. United States*, __ U.S. __, 113 S. Ct. 554, 562 (1992) ("the court

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[4] On the other hand, criminal forfeiture is an *in personam* action brought as an additional sanction against a defendant in a criminal case. *D.K.G. Appaloosas*, 829 F.2d at 543 (quoting legislative history of 21 U.S.C. § 853). According to the record in this case, the courts have no personal jurisdiction over petitioners because they are Colombian citizens and residents who conduct no business in the United States. Moreover, they have not been convicted of any crime in the United States.

must have actual or constructive control of the res when an *in rem* forfeiture suit is initiated"). Moreover, 28 U.S.C. § 1355, which provides subject matter jurisdiction in *in rem* forfeiture actions, does not obviate the need for *in rem* jurisdiction over the *res*. *One Lear Jet Aircraft*, 836 F.2d at 1575, *disapproved in part by*, *Republic National Bank*, 113 S. Ct. 554.[5]

In the district court, there was substantial support for petitioners' argument that the court lacked the required control over the *res*--the assets held in foreign banks. In fact, the lead government agent testified in deposition that she did not believe the government could get the money from Hong Kong and London, even if it were successful in the forfeiture actions. Supp. RE 5-6. In addition, the then-recent decision of the United States District Court for the Western District of New York, *see supra* at 5, further supported petitioners' legal position. As even the district court recognized: "It is far from settled as to whether a court has *in rem* jurisdiction where the *res* is located not only outside the court's own district, but outside the United States as well." App. 7a; App. 12a. Nonetheless, the lower courts refused to decide the jurisdictional issue.

Although "[t]he fictions of *in rem* forfeiture were developed primarily to expand the reach of the courts and to furnish remedies for aggrieved parties," *Republic National Bank*, 113 S. Ct. at 559, the procedure employed in this case extends the fictions into fantasy. The result here, deeming the jurisdictional defect waived when petitioners had

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[5] Although § 1355 was amended in 1992, adding subsections (b) - (d), the amendments in no way suggest any change in the requirement of *in rem* jurisdiction. The amended statute simply provides specific authorization for the district courts to hear forfeiture actions involving assets located outside the United States, if *in rem* jurisdiction is otherwise proper under *Republic National Bank*.

specifically raised it and had done so prior to issuance of the second Superseding Indictment, is to obviate the requirement that the court have jurisdiction at all. Where the case against petitioners is largely one of guilt by association (with their relative Gacha), to hold that petitioners have waived all right to due process, have abandoned all jurisdictional objections, and thereby forfeited their rights to their assets in foreign banks because they have not traveled from their homes in South America for the purpose of being arrested here, and to make such findings based on a doctrine developed to deal with totally different circumstances, blatantly violates any notion of fairness and the interests of justice.

C. Application Of The Fugitive Disentitlement Doctrine Under These Circumstances Allows The Government Unfettered Ability To Indict In Bad Faith.

The actions of the government demonstrate that they acted in bad faith, purposely manipulating the system to invoke the fugitive disentitlement doctrine and thus to remove a large obstacle to seizure of $5.5 million belonging to others. The automatic application of the fugitive disentitlement doctrine by the lower courts precluded scrutiny of the issue of the government's bad faith, an issue not present in the cases on which the lower courts relied. *Cf. Harmelin v. Michigan*, 501 U.S. __, 111 S. Ct. 2680, 2693 n.9 (1991) ("[I]t makes sense to scrutinize governmental action more closely when the State stands to benefit").

These forfeiture actions began months before the second Superseding Indictment was issued and were not intentionally directed at petitioners' assets. The initial two indictments did not name any petitioner as a defendant. Not until after petitioners filed claims of ownership and challenged the court's jurisdiction over their assets in other countries did the government seek to indict them. Petitioners were the only individuals charged in the second Superseding Indictment

who had not been charged in the earlier indictment, filed nearly two years before.

Under these circumstances, the government's actions indicate that it acted in bad faith in seeking an indictment of petitioners. Particularly telling is the fact that the government obtained two extensions of time to respond to petitioners' motions to dismiss, time which it used to obtain an indictment against petitioners. Moreover, the indictment followed quickly after a sister court issued a decision, very favorable to petitioners, that was based on case law controlling in the court where the actions below were pending. Thus, the government succeeded in having the claims dismissed without consideration of either the jurisdictional question or of the merits. By dismissing petitioners' claims based on a rule developed to handle very different situations, the courts below allowed the government to abuse its power to indict for the purpose of eliminating obstacles to its specious claims to forfeiture.

As this case demonstrates, the danger of government abuse of the fugitive disentitlement doctrine is particularly strong in light of 28 U.S.C. § 1355, which grants to district courts subject matter jurisdiction over actions brought for any forfeiture, specifically including under the recently added subsection (b) forfeiture of property outside the United States. Combined with the ease with which the government may obtain indictments, *see United States v. Williams*, __ U.S. __, 112 S. Ct. 1735, 1746 (1992) (court will not hear challenge to indictment based on inadequate, unreliable, or incompetent evidence), and the fugitive disentitlement doctrine as applied by the Eleventh Circuit, the government is able to indict individuals *outside* the United States, who the government does not allege have ever even been to the United States, in order to seize their assets *outside* the United States, without a determination on the merits or on jurisdiction. This scheme provides no limit on the government's ability to strip individuals of the protections of due process and fundamental fairness, otherwise guaranteed

to anyone brought before our courts, in an action in which the government itself will profit from the successful forfeiture.

Fundamental notions of due process are deeply offended by conduct such as the government's here. *Cf. James Daniel Good Real Property*, 114 S. Ct. at 502 (due process "is of particular importance here, where the government has a direct pecuniary interest in the outcome of the proceeding"). For this reason as well, the petition should be granted.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

Richard A. Hamar
(Counsel of Record)
Hamar & Hamar
2437 Briarcrest Road
Beverly Hills, CA 90210
(310) 550-0460

Alan B. Morrison
Allison M. Zieve
Public Citizen Litigation Group
Suite 700
2000 P Street, NW
Washington, D.C. 20036
(202) 833-3000

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CLERK

IN THE UNITED STATES COURT OF APPEAL

FOR THE ELEVENTH CIRCUIT

No. 92-2294

D.C. Docket No. 91-647-CIV-J-16

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CERTAIN FUNDS IN THE UNITED KINGDOM CONTAINED IN ACCOUNT NO. 01042000 (IN THE NAME OF FIDUCORP); 0325310 (IN THE NAME OF FIDUCORP); 03028711 (IN THE NAME OF FIRST INTERSTATE, LTD.), LOCATED AT BANK OF CREDIT AND COMMERCE INTERNATIONAL, PARK LANE, LONDON,

Defendant,

SARA EDILMA PIMENTEL DE ALVAREZ,

Claimant-Appellant.

No. 92-2295

D.C. Docket No. 91-649-CIV-J-16

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CERTAIN FUNDS IN THE UNITED KINGDOM CONTAINED IN ACCOUNT NO. 030008753 (IN THE NAME OF HAVERSTOCK); AT BANK OF CREDIT AND COMMERCE INTERNATIONAL, EDGEWARE ROAD, LONDON,

Defendant,

ANIBAL CASTRO RODRIGUEZ,

Claimant-Appellant.

NO. 92-2940

D.C. Docket No. 91-1013-CIV-J-12

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

U.S. CURRENCY, $8,985,427.20, more or less, plus interest, at the American National Bank of Florida, Jacksonville, Florida, Account No. 408004951-01,

Defendant,

DOLORES RODRIGUEZ DE CASTRO, ANIBAL CASTRO RODRIGUEZ, SARA EDILMA PIMENTEL DE ALVAREZ,

Claimants-Appellants.

No. 93-2424

D.C. Docket No. 91-646-CIV-J-10

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CERTAIN FUNDS, in the Isle of Man contained in a fixed deposit account (in the name of first interstate) account No. 1285/01 deposited on 10th July, 1989 as 365,973 pounds sterling, plus interest, in the current amount of 561,817.46 pounds sterling (in the approximate amount of $786,544.44 U.S. dollars), plus additional interest accruing thereon, located at Barclays Finance Company (Isle of Man) Limited, Barclays House, Victoria Street, Douglas, Isle of Man,

Defendants,

SARA EDILMA PIMENTEL DE ALVAREZ,

Claimant-Appellant.

Appeals from the United States District Court for the Middle District of Florida

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(April 13, 1994)

Before MORGAN, HILL and FAY, Senior Circuit Judges.

PER CURIAM:

We find the issues before us in these matters are controlled by the Court's opinion and ruling in United States v. One Parcel of Real Estate Dade County, Fla., 868 F.2d 1214 (11th Cir. 1989).

The judgment of the district court is affirmed.

NO. 92-2940

D.C. Docket No. 91-1013-CIV-J-12

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

U.S. CURRENCY, $8,985,427.20, more or less, plus interest, at the American National Bank of Florida, Jacksonville, Florida, Account No. 408004951-01,

Defendant,

DOLORES RODRIGUEZ DE CASTRO, ANIBAL CASTRO RODRIGUEZ, SARA EDILMA PIMENTEL DE ALVAREZ,

Claimants-Appellants.

No. 93-2424

D.C. Docket No. 91-646-CIV-J-10

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CERTAIN FUNDS, in the Isle of Man contained in a fixed deposit account (in the name of first interstate) account No. 1285/01 deposited on 10th July, 1989 as 365,973 pounds sterling, plus interest, in the current amount of 561,817.46 pounds sterling (in the approximate amount of $786,544.44 U.S. dollars), plus additional interest accruing thereon, located at Barclays Finance Company (Isle of Man) Limited, Barclays House, Victoria Street, Douglas, Isle of Man,

Defendants,

SARA EDILMA PIMENTEL DE ALVAREZ,

Claimant-Appellant.

Appeals from the United States District Court for the Middle District of Florida

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(April 13, 1994)

Before MORGAN, HILL and FAY, Senior Circuit Judges.

PER CURIAM:

We find the issues before us in these matters are controlled by the Court's opinion and ruling in United States v. One Parcel of Real Estate Dade County, Fla., 868 F.2d 1214 (11th Cir. 1989).

The judgment of the district court is affirmed.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v. Case No. 91-647-Civ-J-16

CERTAIN FUNDS IN THE UNITED KINGDOM CONTAINED IN ACCOUNT NOS. 01042000 (IN THE NAME OF FIDUCORP); 03025310 (IN THE NAME OF FIDUCORP); 03028711 (IN THE NAME OF FIRST INTERSTATE, LTD.) LOCATED AT BANK OF CREDIT AND COMMERCE INTERNATIONAL, PARK LANE, LONDON,
Defendant.

ORDER

This cause is before the Court on Claimant Sara Edilma Pimentel de Alvarez's [hereinafter "Claimant"] motion to dismiss (Docket no. 14), and on the government's motion to dismiss claims of Colombian claimants and for entry of final forfeiture judgment (Docket no. 34). Timely responses have been filed.

On August 21, 1991, the government filed a complaint for forfeiture of certain funds located in the United Kingdom at the Bank of Credit and Commerce International, Park Lane, London, contained in account no. 01042000 (in the name of Fiducorp); account no. 03025310 (in the name of Fiducorp); and, account no. 03028711 (in the name of First Interstate, Ltd.). The basis of the government's action is that the Defendant funds represent traceable proceeds of

trafficking in controlled substances or were used or intended to be used to facilitate a violation of 21 U.S.C. § 801, *et seq.*, and the provisions of 18 U.S.C. § 981 (a)(1)(A) in that the funds were involved in transactions or attempted transactions in violation of 18 U.S.C. § 1956(a)(1).

Claimant filed her verified claim to the funds located in account nos. 01042000 and 03028711 on September 24, 1991.[1] On November 22, 1991, a federal grand jury indicted Claimant on violations of federal narcotics laws. Claimant has failed to appear in the criminal case, *United States v. Escobar, et al.*, 89-29-(S3)-Cr-J-16.

As an initial matter, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1345,1355. Section 1345 gives the district courts "original jurisdiction of all civil actions, suits or proceedings commenced by the United States ...." Section 1355 gives the district courts "original jurisdiction ... of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture, pecuniary or otherwise, incurred under any Act of Congress ...." Inasmuch as the United States commenced this case seeking forfeiture under Acts of Congress, it is clear that this Court has subject matter jurisdiction over this action.

Claimant asserts that, because the Defendant funds are located outside of this district (and outside the United States), this Court lack *in rem* jurisdiction over the funds. The government contends that Claimant has no right to contest the forfeiture due to the Claimant's status as "fugitive from justice."

Traditionally, a court's *in rem* jurisdiction derives entirely from its control over the defendant *res*. *United States v. One Lear Jet Aircraft*, 836 F.2d 1571, 1573 (11th

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[1]No claim, answer, or other defensive pleading has been filed as to account no. 03025310. Default was entered as to this account on November 5, 1991, and default judgment as to this account was granted by this Court in a recent Order.

Cir. 1988). In general, the *res* must be physically present within the court's jurisdiction. *See id.* at 1573 (stating that the removal of the *res* from a court's territorial jurisdiction destroys the court's *in rem* jurisdiction).

Unlike subject matter jurisdiction, a claimant to the *res* may waive any objection she has to *in rem* jurisdiction, to the extent of her interest in the *res*. *Cactus Pipe & Supply Co., Inc. v. M/V Montmartre*, 756 F.2d 1103, 1107 (5th Cir. 1985). Waiver can occur when a claimant files a claim without preserving any jurisdictional objection. *See id.* at 1110.

Waiver can also occur by a claimant's decision to remain a fugitive in a related criminal proceeding. In that regard, the "fugitive from justice" doctrine posits that a criminal's flight from justice "disentitles the defendant to call upon the resources of the Court for determination of his claim." *Molinaro v. New Jersey*, 396 U.S. 365, 90 S. Ct. 498 (1970); *see United States v. One Parcel of Real Estate at 7707 S.W. 74th Lane, Miami, Dade County, Florida*, 868 F.2d 1214, 1216 (11th Cir. 1989). A person obtains fugitive status in this context when a person fails to surrender to authorities once she learns that charges against her are pending. *United States v. One Parcel of Real Property in the City of Grandview, Jackson County, Missouri*, 776 F. Supp. 482, 484 (W.D. Mo. 1991) (*citing United States v. Catino*, 735 F.2d 718 (2d Cir.), *cert. denied*, 469 U.S. 855, 105 S. Ct. 180 (1984)). In a civil forfeiture proceeding, the fugitive from justice has essentially "'waived his right to due process.'" *One Parcel of Real Estate*, 868 F.2d at 1217 (quoting *United States v. $45,940*, 739 F.2d 792, 798 (2d Cir. 1984)). The fugitive's own actions disentitle her to raise objections to the forfeiture as claimant to the property. *One Parcel of Real Estate*, 868 F.2d at 1217.

Applying these principles to the case at bar is straightforward. Claimant was indicted in a related criminal

case in this district on November 22, 1991.[2] Her response to the government's motion to dismiss indicates that she has knowledge of the indictment against her, yet she has failed to voluntarily surrender to authorities. Claimant is thus a fugitive from justice who is not entitled to raise objections to the forfeiture as a claimant to the property. Claimant has, by her own actions as a fugitive from justice, waived her right to object to this Court's *in rem* jurisdiction and has rendered this case essentially an "uncontested action." *See id.* In essence, Claimant's jurisdictional objection does not exist.

Were Claimant not a fugitive from justice, a substantial objection to *in rem* jurisdiction would be at issue. It is far from settled as to whether a court has *in rem* jurisdiction when the *res* is located not only outside the court's own district, but outside the United States as well. *See, e.g., One Lear Jet Aircraft*, 836 F.2d at 1573 (11th Cir. 1988) (indicating that physical presence of the *res* is required for a proper exercise of *in rem* jurisdiction); *but see id.* (stating that "the court's power derives entirely from its *control* over the defendant *res*.") (emphasis added). However, that issue need not be decided here, due to the Claimant's status as a fugitive from justice. Accordingly, it is now

ORDERED AND ADJUDGED:

1. Claimant's motion to dismiss (docket no. 14) is denied.

2. The government's motion to dismiss claims of Colombian claimants and for entry of final forfeiture judgment (docket no. 34) is granted. The claim filed on

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[2]Claimant has questioned the propriety of the government's actions in choosing to indict her "mainly to obtain an advantage in the instant civil case." *See* Claimant's response, docket no. 37, at p. 4. Whatever the government's motive was in indicting the Claimant is irrelevant to this case at this time. If Claimant wishes to challenge the indictment, she must do so by filing an appropriate motion in the criminal case.

behalf of Claimant is hereby dismissed, and the Defendant currency in account no. 01042000 and account no. 03028711 is hereby forfeited to the United States of America. The United States Marshals Service is directed to dispose of the Defendant currency in account no. 01042000 and account no. 03028711 in the manner prescribed by law.

DONE AND ORDERED in Chambers in Jacksonville, Florida, this 5 day of February, 1992.

John H. Moore II /sig/
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v. Case No. 91-649-Civ-J-16

CERTAIN FUNDS IN THE UNITED KINGDOM CONTAINED IN ACCOUNT NO. 030008753 (IN THE NAME OF HAVERSTOCK); AT BANK OF CREDIT AND COMMERCE INTERNATIONAL, EDGWARE ROAD, LONDON,
Defendant.

ORDER

This cause is before the Court on Claimant Anibal Castro Rodriguez's [hereinafter "Claimant"] motion to dismiss (Docket no. 12), and on the government's motion to dismiss claims of Colombian claimants and for entry of final forfeiture judgment (Docket no. 29). Timely responses have been filed.

On August 21, 1991, the government filed a complaint for forfeiture of certain funds located in the United Kingdom at the Bank of Credit and Commerce International, Edgware Road, London, contained in account no. 030008753 (in the name of Haverstock). The basis of the government's action is that the Defendant funds represent traceable proceeds of trafficking in controlled substances or were used or intended to be used to facilitate a violation of 21 U.S.C. § 801, *et seq.*, and the provisions of 18 U.S.C. § 981(a)(1)(A) in that

the funds were involved in transactions or attempted transactions in violation of 18 U.S.C. § 1956(a)(1).

Claimant filed her verified claim to the funds located in account no. 030008753 on September 24, 1991. On November 22, 1991, a federal grand jury indicted Claimant on violations of federal narcotics laws. Claimant has failed to voluntarily surrender in the criminal case, *United States v. Escobar, et al.*, 89-29-(S3)-Cr-J-16.

As an initial matter, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1345, 1355. Section 1345 gives the district courts "original jurisdiction of all civil actions, suits or proceedings commenced by the United States...." Section 1355 gives the district courts "original jurisdicition ... of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture, pecuniary or otherwise, incurred under any Act of Congress...." Inasmuch as the United States commenced this case seeking forfeiture under Acts of Congress, it is clear that this Court has subject matter jurisdiction over this action.

Claimant asserts that, because the Defendant funds are located outside of this district (and outside the United States), this Court lacks *in rem* jurisdiction over the funds. The government contends that Claimant has no right to contest the forfeiture due to the Claimant's status as a "fugitive from justice."

Traditionally, a court's *in rem* jurisdiction derives entirely from its control over the defendant *res*. *United States v. One Lear Jet Aircraft*, 836 F.2d 1571, 1573 (11th Cir. 1988). In general, the *res* must be physically present within the court's jurisdiction. *See id.* at 1573 (stating that the removal of the *res* from a court's territorial jurisdiction destroys the court's *in rem* jurisdiction).

Unlike subject matter jurisdiction, a claimant to the *res* may waive any objection she has to *in rem* jurisdiction, to the extent of her interest in the *res*. *Cactus Pipe & Supply Co., Inc. v. M/V Montmartre*, 756 F.2d 1103, 1107 (5th Cir.

1985). Waiver can occur when a claimant files a claim without preserving any jurisdictional objection. *See id.* at 1110.

Waiver can also occur by a claimant's decision to remain a fugitive in a related criminal proceeding. In that regard, the "fugitive from justice" doctrine posits that a criminal's flight from justice "disentitles the defendant to call upon the resources of the Court for determination of his claim." *Molinaro v. New Jersey*, 396 U.S. 365, 90 S. Ct. 498 (1970); *see United States v. One Parcel of Real Estate at 7707 S.W. 74th Lane, Miami, Dade County, Florida*, 868 F.2d 1214, 1216 (11th Cir. 1989). A person obtains fugitive status in this context when a person fails to surrender to authorities once she learns that charges against her are pending. *United States v. One Parcel of Real Property in the City of Grandview, Jackson County, Missouri*, 776 F. Supp. 482, 484 (W.D. Mo. 1991) (*citing United States v. Catino*, 735 F.2d 718 (2d Cir.), *cert. denied*, 469 U.S. 855, 105 S. Ct. 180 (1984)). In a civil forfeiture proceeding, the fugitive from justice has essentially "'waived his right to due process.'" *One Parcel of Real Estate*, 868 F.2d at 1217 (quoting *United States v. $45,940*, 739 F.2d 792, 798 (2d Cir. 1984)). The fugitive's own actions disentitle her to raise objections to the forfeiture as claimant to the property. *One Parcel of Real Estate*, 868 F.2d at 1217.

Applying these principles to the case at bar is straightforward. Claimant was indicted in a related criminal case in this district on November 22, 1991.[1] Her response

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[1]Claimant has questioned the propriety of the government's actions in choosing to indict her "mainly to obtain an advantage in the instant civil case." *See* Claimant's response, docket no. 37, at p. 4. Whatever the government's motive was in indicting the Claimant is irrelevant to this case at this time. If Claimant wishes to challenge the indictment, she must do so by filing an appropriate motion in the criminal case.

to the government's motion to dismiss indicates that she has knowledge of the dictment against her, yet she has failed to voluntarily surrender to authorities. Claimant is thus a fugitive from justice who is not entitled to raise objections to the forfeiture as a claimant to the property. Claimant has, by her own actions as a fugitive from justice, waived her right to object to this Court's *in rem* jurisdiction and has rendered this case essentially an "uncontested action." *See id.* In essence, Claimant's jurisdictional objection does not exist.

Were Claimant not a fugitive from justice, a substantial objection to *in rem* jurisdiction would be at issue. It is far from settled as to whether a court has *in rem* jurisdiction when the *res* is located not only outside the court's own district, but outside the United States as well. *See, e.g., One Lear Jet Aircraft*, 836 F.2d at 1573 (11th Cir. 1988) (indicating that physical presence of the *res* is required for a proper exercise of *in rem* jurisdiction); *but see id.* (stating that "the court's power derives entirely from its *control* over the defendant *res*.") (emphasis added). However, that issue need not be decided here, due to the Claimant's status as a fugitive from justice. Accordingly, it is now

ORDERED AND ADJUDGED:

1. Claimant's motion to dismiss (docket no. 14) is denied.

2. The government's motion to dismiss claims of Colombian claimants and for entry of final forfeiture judgment (docket no. 34) is granted. The claim filed on behalf of Claimant is hereby dismissed, and the Defendant currency in account no. 030008753 is hereby forfeited to the United States of America. The United States Marshals Service is directed to dispose of the Defendant currency in account no. 030008753 in the manner prescribed by law.

DONE AND ORDERED in Chambers in Jacksonville, Florida, this 5 day of February, 1992.

John H. Moore II /sig/
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

-vs- CASE NO. 91-1013 CIV-J-12

$8,985,427.20 IN UNITED STATES CURRENCY, MORE OR LESS, PLUS INTEREST, AT THE AMERICAN NATIONAL BANK OF FLORIDA, JACKSONVILLE, FLORIDA, ACCOUNT NO. 408004951-01,
Defendant.
_____/

ORDER DISMISSING CLAIMS AND DIRECTING ENTRY OF FINAL JUDGMENT OF FORFEITURE

This is one of eight separate cases instituted in this Court by the United States pursuant to 21 U.S.C. § 881(a)(6) seeking the forfeiture of funds deposited in foreign banks by, or for the account of, Jose Gonzalo Rodriguez-Gacha, now deceased and alleged to be a former member of the Medellin Cartel. The complaint, including an attached affidavit, alleges that the deposits involved were derived from drug trafficking in the United States.

The complaint in this case seeks the forfeiture of Rodriguez-Gacha funds which were seized in Switzerland by Swiss authorities and were then transferred to the United States for commencement of these proceedings. The remaining cases pending or lately pending in this Court involve Rodriguez-Gacha accounts in the United Kingdom or in Hong Kong, and those cases involve jurisdictional issues not present here; the funds involved in this case are within

the United States and, more particularly, within the Middle District of Florida.

The funds at issue in this case were placed in four separate accounts in three separate banks in Zurich, Switzerland:

Bank	Account No.	Name of Account	Amount
Dai-Ichi Kangyo	5611	Moorgate Securities, Ltd.	$ 724,589.90
Dai-Ichi Kangyo	5496	First Interstate, Ltd.	577,912.60
Mitsubishi Bank	2023	Haverstock Ltd.	2,962,768.85
Swiss Bank Corp.	In the name of	Banco Ganadero	4,720,155.85
	Total		$8,895,427.20

No claim has been made to the funds transferred here by the Swiss authorities from the fourth account in the name of Banco Ganadero, and a partial default judgment has previously been entered forfeiting the $4,720,155.85 from that account to the United States (Doc. 15). With respect to the remaining accounts, three claimants have appeared through counsel and have filed both claims and answers (Doc. 3, 4, 5, 7, 8 and 9).

The first claimant is Dolores Rodriguez De Castro who asserts that she "... is the signatory and claimant of Account No. 5611-8, in the name of Moorgate Securities, Ltd. in the Dai-Ichi Kangyo Bank, Zurich," and that she "... acquired these funds through numerous years in her legitimate large scale cattle business." (Verified Claim, Doc. 3, para. 7 & 8, p. 2). The Government alleges that Dolores Rodriguez De Castro is the sister of Rodriguez-Gacha (Reply of the United States, Doc. 23, p. 4).

The second claimant is Anibal Castro Rodriguez who asserts that he "... is the signatory and claimant of Account No. 2023/00,08 in the name of Haverstock Ltd. in Mitsubishi Bank of Zurich and Account No. 2023/01,06 in the name of Haverstock Ltd. in Mitsubishi Bank of Zurich," and that such accounts "... are part of the funds he obtained through his legitimate work since the age of 12, including his large scale cattle business." (Verified Claim, Doc. 4, para. 7 & 8, p. 2). The Government alleges that Anibal Castro

Rodriguez and Dolores Rodriguez De Castro are husband and wife so that Castro Rodriguez was the brother-in-law of Rodriguez-Gacha. (Reply of the United States, Doc. 23, p. 4).

The third claimant is Sara Edilma Pimentel De Alvarez who asserts that she "... is the signatory and claimant of Account No. 5496-4 in the name of First Interstate Ltd. at Dai-Ichi Kangyo Bank, Zurich," and that such account represents "... funds she obtained through approximately a 20 year period of legitimate and extensive real estate business, the purchase and sale of duty free general merchandise and the purchase and sale of emeralds." (Verified Claim, Doc. 5, para. 7 & 8, p.2). The Government alleges that Sara Edilma Pimentel De Alvarez is the mother of Gladys Edilma Alvarez Pimentel who was the common law wife of Rodriguez-Gacha, i.e., the claimant was mother-in-law to Rodriguez-Gacha (Reply of the United States, Doc. 23, p.4).

Each of the claims and each of the answers was filed by counsel without personal endorsement or verification by any of the claimants, and each of the claims state that the respective claimants are citizens and residents of Colombia.

By superseding indictment returned on November 22, 1991 in the case of *United States of America v. Pablo Escobar-Gaviria*, Case No. 89-29 CR-J-16, still pending in this court,[1] each of the claimants was charged in that indictment with the commission of a conspiracy offense in violation of Title 21, United States Code, Section 841.[2]

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[1]The third superseding indictment consisted of ten counts and named a total of 26 defendants.

[2]The Court takes judicial notice of that indictment and the docket of the case which reflects that unexecuted capias warrants have been issued and are presently outstanding with respect to each of the claimants involved in this case. (See Docs. 1268, 1271 and

More specifically, the indictment charges that from 1974 through November 1991, in the Middle District of Florida and elsewhere, the three claimants knowingly and willfully conspired with Jose Gonzalo Rodriguez-Gacha and others to distribute five kilograms or more of cocaine in violation of Title 21, United States Code, Section 841. Then, Overt Act 173 alleges that from the end of 1984 through late 1989 at Rodriguez-Gacha's direction, the claimant Anibal Castro Rodriguez and thus [sic] opened bank accounts in various countries on behalf of Rodriguez-Gacha and caused proceeds from his cocaine smuggling operation to be deposited in those accounts, including accounts in Switzerland. Overt Act 215 alleges that in or about mid July 1987 the claimant Sara Edilma Pimentel De Alvarez became a signatory on bank accounts in the name First Interstate, Ltd. at the Dai-Ichi Kangyo Bank into which proceeds of Rodriguez-Gacha's cocaine smuggling operation were deposited. Overt Act 220 alleges that in or about July 1988 the claimant Dolores Rodriguez De Castro became a signatory on bank accounts at the Union Bank of Switzerland in the name of Xyaer International in which large sums of money were deposited which were proceeds of Rodriguez-Gacha's cocaine smuggling operation.[3]

Citing *United States v. One Parcel of Real Estate, etc.*, 868 F.2d 1215 (11th Cir. 1989) the Government has moved

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1274 in Case No. 89-29 CR-J-16). Judicial notice of such records is appropriate. See *St. Louis Baptist Temple, Inc. v. Federal Deposit Insurance Corporation*, 605 F.2d 1169, 1172 (10th Cir. 1979), cited with approval in *Cash Inn of Dade, Inc. v. Metropolitan Dade County*, 938 F.2d 1239, 1243 (11th Cir. 1991).

[3]The account identified in Overt Act 220 is not the same account involved in this case. However, Exhibit A to the indictment, expressly incorporated by reference in Overt Act 173, specifically describes each of the accounts in Switzerland as identified in the complaint in this case.

to dismiss each of the claims and for entry of a final judgment of forfeiture pursuant to the "fugitive disentitlement doctrine" as applied in that decision. It appears that the Government's motion is correct and that the decision of the Court of Appeals in *United States v. One Parcel of Real Estate* is squarely on point. Dealing with a virtually identical factual situation, the Court said:

> "The *in rem* forfeiture action against the defendant real property is unquestionably related to the applicant's indictment for drug trafficking. By fleeing from justice appellant has disentitled himself from invoking the judicial process in the civil forfeiture action. Thus, the district court was correct in dismissing appellant's claim."

Id. 868 F.2d at 1216. See also *Schuster v. United States*, 765 F.2d 1047 (1985) in which the fugitive disentitlement doctrine was applied to a claimant, like those in this case, who was out of the United States at the time of indictment but was deemed to be in flight from justice by not appearing for approximately three years.

The claimants' only response to the Government's argument is that the United States should not be permitted to avail itself of the fugitive disentitlement doctrine "... where it has indicted the claimants for the purpose of obtaining an unfair advantage in the civil forfeiture cases." (Claimants' Opposition Memorandum, Doc. 17, p. 4). However, no authority is cited in support of that contention; and, the law is clear that as long as a prosecutor has probable cause to believe that the accused has committed an offense, the decision to prosecute generally rests entirely in his discretion. *Wayte v. United States*, 470 U.S. 598, 607, 105 Sup. Ct. 1524, 1531 (1985). The return of the indictment by the grand jury is prima facia [sic] evidence of probable cause; and, absent any claim that the indictment was sought for an unconstitutional purpose, the decision to prosecute is not subject to judicial scrutiny. Moreover, even if such a

claim was made on constitutional grounds, the only proper forum in which to present that claim would be the criminal proceeding, not in this civil case.

It follows that the Government's motion (Doc. 12) is GRANTED, the verified claims and answers of the claimants in this action are stricken, and the Clerk is directed to enter final judgment of forfeiture by default with respect to all of the remainder of the defendant currency or *res* not previously included within the partial default judgment entered January 29, 1992 (Doc. 15). The motion of the claimants for oral argument (Doc. 18) is DENIED.

IT IS SO ORDERED.

DONE and ORDERED at Jacksonville, Florida, this 27th day of August, 1992.

Wm. Terrell Hodges /sig/
UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA,
Plaintiff,

-vs- CASE NO. 92-1282 Civ-J-10

CERTAIN FUNDS IN LUXEMBOURG CONTAINED IN ACCOUNT NOS. 055-561 (IN THE NAME OF FIRST INTERSTATE, LTD.); 055-556 (IN THE NAME OF UNION ENTERPRISES, LTD.); 055-560 (IN THE NAME OF HAVERSTOCK, LTD.); 055-335 (IN THE NAME OF FIDUCORP, S.A.) LOCATED AT BFG LUXEMBOURG,
Defendants.
_____/

UNITED STATES OF AMERICA,
Plaintiff,

-vs- CASE NO. 92-1286 Civ-J-10

CERTAIN FUNDS IN LUXEMBOURG CONTAINED IN ACCOUNT NO. 25094 (IN THE NAME OF FIDUCORP, S.A.) LOCATED AT BANQUE HAPOALIM, LUXEMBOURG,
Defendant.
_____/

UNITED STATES OF AMERICA,
Plaintiff,

-vs- CASE NO. 92-1290 Civ-J-10

CERTAIN FUNDS IN LUXEMBOURG CONTAINED IN ACCOUNT NOS. 70113 (IN THE NAME OF UNION ENTERPRISES, LTD.); 75009 (IN THE NAME OF XAYAR INTERNATIONAL CORP.); 69270 (IN THE NAME OF TRANSCONTINENTAL TRADERS) LOCATED AT DRESDNER BANK, LUXEMBOURG,

Defendants.

_____/

UNITED STATES OF AMERICA,

Plaintiff,

-vs- CASE NO. 92-1291 Civ-J-10

CERTAIN FUNDS IN LUXEMBOURG CONTAINED IN ACCOUNT NOS. 938668 (IN THE NAME OF MOORGATE SECURITY, LTD.); 952944 (IN THE NAME OF HAVERSTOCK, LTD.); 954297 (IN THE NAME OF UNION ENTERPRISES, LTD.); 954296 (IN THE NAME OF FIRST INTERSTATE, LTD.) LOCATED AT UNION BANK OF SWITZERLAND, LUXEMBOURG,

Defendants.

_____/

UNITED STATES OF AMERICA,

Plaintiff,

-vs- CASE NO. 92-1292 Civ-J-10

CERTAIN FUNDS IN LUXEMBOURG CONTAINED IN ACCOUNT NOS. 05189090 (IN THE NAME OF

HAVERSTOCK, LTD.); 05188872
(IN THE NAME OF UNION ENTERPRISES,
LTD.); 05188981 (IN THE NAME OF
FIRST INTERSTATE, LTD.); 05162860
(IN THE NAME OF FIDUCORP, S.A.);
05211796 (IN THE NAME OF WATFORD
INVESTMENTS, LTD.) LOCATED AT BANQUE
PARIBAS, LUXEMBOURG,

Defendants.

_____/

ORDER

Pursuant to the Order (91-598, Doc. 66; 91-646, Doc. 81; 92-1282, Doc. 31; 92-1286, Doc. 10; 92-1290, Doc. 36; 92-1291, Doc. 36; 92-1292, Doc. 38) entered 3 March 1993, and the Government's response (91-598, Doc. 77; 91-646, Doc. 86; 92-1282, Doc. 35; 92-1286, Doc. 12; 92-1290, Doc. 40; 92-1291, Doc. 40; 92-1292, Doc. 42) thereto:

1. Claimants' motions (91-598, Doc. 72; 91-646, Doc. 83; 92-1282, Doc. 33; 92-1290, Doc 38; 92-1291, Doc. 38; 92-1292, Doc. 40) to dismiss the complaint are DENIED.

2. Claimant De Alvarez' motions (91-646, Docs. 7 & 61) to dismiss the complaint are DENIED.

Furthermore, upon due consideration, the Government's motion (91-646, Doc. 67) to dismiss Claimant De Alvarez' claim and for entry of final forfeiture judgment is GRANTED and Claimant De Alvarez' claim is hereby dismissed and the Government shall have ten (10) days to file a form judgment of forfeiture in Case No. 91-646-Civ-J-10.

IT IS SO ORDERED.

DONE AND ORDERED at Jacksonville, Florida, this 25th day of March, 1993.

Wm. Terrell Hodges /sig/
UNITED STATES DISTRICT JUDGE

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JUN 20 1994
MIGUEL J. CORTEZ
CLERK

IN THE UNITED STATES COURT OF APPEAL

FOR THE ELEVENTH CIRCUIT

No. 92-2294

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

CERTAIN FUNDS IN THE UNITED KINGDOM
CONTAINED IN ACCOUNT NO. 01042000,
(IN THE NAME OF FIDUCORP), ET AL.,
Defendant,

SARA EDILMA PIMENTEL DE ALVAREZ,
Claimant-Appellant.

No. 92-2295

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

CERTAIN FUNDS IN THE UNITED KINGDOM
CONTAINED IN ACCOUNT NO. 030008753
(IN THE NAME OF HAVERSTOCK), ET AL.,
Defendant,

ANIBAL CASTRO RODRIGUEZ,
Claimant-Appellant.

NO. 92-2940

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

U.S. CURRENCY, $8,985,427.20, MORE OR LESS, PLUS INTEREST, AT THE AMERICAN NATIONAL BANK OF FLORIDA, JACKSONVILLE, FLORIDA, ACCOUNT NO. 408004951-01,

Defendant,

DOLORES RODRIGUEZ DE CASTRO,
ANIBAL CASTRO RODRIGUEZ, and
SARA EDILMA PIMENTEL DE ALVAREZ,

Claimants-Appellants.

No. 93-2424

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CERTAIN FUNDS, IN THE ISLE OF MAN CONTAINED IN A CERTIFICATE OF DEPOSIT (IN THE NAME OF FIRST INTERSTATE LTD.) ET AL.,

Defendants,

SARA EDILMA PIMENTEL DE ALVAREZ,

Claimant-Appellant,

HILDA RODRIGUEZ DE CABRERA, AND
SAADIA CONSTANZA ALVAREZ PIMENTEL,

Claimants.

On Appeal from the United States District Court for the Middle District of Florida

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Before: MORGAN, HILL and FAY, Senior Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:
Judge Fay /sig/
UNITED STATES CIRCUIT JUDGE

ORD-42
(9/91)